

March 16, 2010

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Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

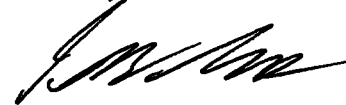
RE: STB Docket No. NOR - 42117, *Cargill, Inc., ExxonMobil Corporation, E.I. du Pont de Nemours and Company, Jones-Hamilton Co., PPG Industries, Inc., Reagent Chemical and Research, Inc., and Taminco Methylamines, Inc. v. Aberdeen and Rockfish Railroad Company, et. al*

Dear Ms. Brown:

Enclosed for filing please find the Motion to Stay Proceeding Against Class II and III Rail Carriers of Cargill, Inc., E.I. du Pont de Nemours and Company, ExxonMobil Corporation, Jones-Hamilton Co., PPG Industries, Inc., Reagent Chemical and Research Inc., and Taminco Methylamines, Inc.

In addition, please note that this Motion also requests additional time for the Class II and III carriers to file Answers, which currently are due on March 18th. Therefore, complainants request expedited consideration.

Sincerely,



Jeffrey O. Moreno
Nicholas J. DiMichael
Counsel for
Cargill Inc.
E.I. du Pont de Nemours and Company
ExxonMobil Corporation
Jones-Hamilton Co.
PPG Industries, Inc.
Reagent Chemical and Research, Inc.
Taminco Methylamines, Inc.

ENTERED
Office of Proceedings

MAR 16 2010

Part of
Public Record

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE

SURFACE TRANSPORTATION BOARD

CARGILL, INC.*et al.*

Complainants,

V.

**ABERDEEN AND ROCKFISH RAILROAD
COMPANY, *et al.***

Defendants.

Docket No. NOR-42117

COMPLAINANTS' MOTION TO STAY PROCEEDING AGAINST CLASS II AND III RAIL CARRIERS

On January 29, 2010, Complainants filed both a Complaint and a Petition for Mediation in the above-captioned proceeding.¹ On February 17, 2010, the Surface Transportation Board ("STB" or "Board") granted an unopposed motion to extend both the due dates for filing Answers to the Complaint and Replies to the Petition for Mediation until March 18, 2010. The Complainants asked the Board to determine the reasonableness of certain rail practices pertaining to empty tank car mileage equalization charges that are assessed pursuant to Freight Tariff RIC 6007-Series (the "Tariff"); to prescribe reasonable rail practices for the future; and to award damages, plus interest, to the extent that the Complainants have suffered or paid charges for unreasonable practices as described in the Complaint. By this Motion, Complainants ask the Board to stay this proceeding only as to the Class II and Class III rail carrier defendants, subject

¹ Complainants filed a First Amended Complaint on February 17, 2010 for the sole purpose of adding two additional complainants to this proceeding.

to the conditions described herein. Complainants request expedited consideration due to the fact that Defendants' Answers and Replies to the Petition for Mediation are due on March 18, 2010.²

Complainants believe that their principal dispute is with the Class I railroads, the Association of American Railroads ("AAR") and Railinc. Complainants, however, believe that the Class II and III rail carriers could be deemed necessary defendants because all of the Class II and III defendants handled empty tank cars on behalf of the Complainants during the two year reparations period and were participants in the Tariff. Since filing their Complaint, the Complainants have engaged the AAR, the American Shortline and Regional Railroad Association, and various individual Class II and III carriers in discussions as to how this case can best proceed without imposing a disproportionate burden and cost upon the Class II and III rail carriers relative to their stake in this case. This motion is the product of those discussions. However, the AAR, Railinc, and the Class I defendants have informed Complainants that they are unable to consent to this Motion, and that they will present their objections to the Board as soon as possible.

Complainants ask the Board to stay this proceeding as to any Class II or III rail carrier under the following terms:

1. In order for the stay to apply to any Class II or III rail carrier, the carrier must execute the Undertaking attached as Exhibit A to this Motion, file the Undertaking with the Board, and serve the Undertaking upon counsel for Complainants and the AAR. The Undertaking, which may be filed in lieu of an Answer, shall identify a representative of the carrier, an address, and a telephone number for service of pleadings and Board decisions.

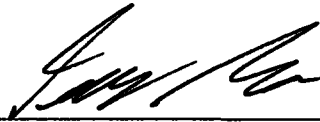
² Complainants also request an extension of time for the Class II and III carriers to file their Answers until one week after the Board issues its decision on this Motion.

2. Except as provided in clauses 3 and 4, upon filing the Undertaking with the Board, a Class II or III rail carrier shall have no further obligation to participate in this proceeding, and shall suffer no penalty for failure to do so. By filing the Undertaking with the Board, a Class II or III rail carrier agrees to be bound by all decisions of the Board in this proceeding and by any settlement of this proceeding entered into between Complainants and the remaining defendants; provided, however, that the Class II or III carriers shall not be required to pay any monetary reparations by a settlement.
3. Any party to this proceeding may ask the Board to revoke the stay as to any Class II or III carrier upon showing that the participation of that carrier is necessary to protect the requesting party's rights, interests, and ability to present defenses.
4. A Class II or III rail carrier may revoke its Undertaking at any time by notifying the Board in writing and serving such notice upon counsel for all parties that have not filed an Undertaking with the Board. A carrier may not revoke its Undertaking in order to submit evidence and argument or partake in discovery after the due dates for such matters in the procedural schedule. Furthermore, the Board may restrict the scope of a carrier's participation, after revoking its Undertaking, if such participation would be unduly prejudicial to a party to this proceeding due to the carrier's failure to participate in prior phases of the case (e.g. carrier's failure to participate in discovery).

WHEREFORE, Complainants pray that the Board:

- (1) Adopt the Undertaking attached hereto as Exhibit A;
- (2) Stay this proceeding in accordance with the terms described herein as to any Class II or III rail carrier that executes and files the Undertaking with the Board; and
- (3) Extend the due date for the Class II and III rail carrier defendants to file their Answers, or in the Alternative their signed Undertakings, until one week after the Board issues its decision on this Motion.

Respectfully submitted,



Jeffrey O. Moreno
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Thompson Hine LLP
1920 N St. N.W.
Suite 800
Washington, D.C. 20036
(202) 331-8800

UNDERTAKING
Docket No. NOR-42117

I, _____, hereby execute this Undertaking on behalf of
_____ ("Railroad"), a Class II or III rail carrier, for
which I am acting in this Proceeding. I have read the Board's order in this Proceeding, served on
March ____, 2010, understand the same, and agree to be bound by its terms. In accordance with
that Order, Railroad elects that this proceeding be stayed as to it, and agrees to the terms and
conditions of such a stay. All decisions, pleadings, and correspondence in this proceeding may
be served upon Railroad at:

Name: _____

Title: _____

Address: _____

Telephone: _____

E-Mail: _____

☐ Check this box if you consent to electronic service of pleadings at the above
e-mail address.

Dated: _____

Signature

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Motion to Stay Proceeding Against Class II and III Rail Carriers of Cargill, Inc., E.I. du Pont de Nemours and Company, ExxonMobil Corporation, Jones-Hamilton Co., PPG Industries, Inc., Reagent Chemical and Research Inc., and Taminco Methylamines, Inc. to be served by email, facsimile and first class mail postage prepaid this 16th day of March 2010, on:


1. The following parties have been served by email:

Michael Rosenthal Covington & Burling LLP 1201 Pennsylvania Avenue, N.W. Washington, DC 20004-2401 <i>For Association of American Railroads Railinc, Corp. BNSF Railway Co. Buffalo & Pittsburgh Railroad, Inc. Canadian National Railway Co. Canadian Pacific Railway Co. CSX Transportation, Inc. Gary Railway Co. Norfolk Southern Railway Co. Rochester & Southern Railroad, Inc. The Kansas City Southern Railway Co. Union Pacific Railroad Co.</i>	Robert Vom Eigen Foley & Lardner LLP 3000 K Street, N.W. Sixth Floor Washington, DC 20007-5109 <i>Counsel For Cedar Rapids and Iowa City Railway Co.</i>
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2. The following parties have been served by facsimile and first class mail:

Garland Horton President Aberdeen and Rockfish Railroad Co. P.O. Box 917 Aberdeen, NC 28315	R.B. Culliford Senior Vice President and General Counsel Boston and Maine Corporation Maine Central Railroad Co. Pan Am Railways Portland Terminal Co. Springfield Terminal Railway Co. 1700 Iron Horse Park No. Billerica, MA 01862-1692
Nicholas B. Temple President Central Washington Railroad Company 111 University Parkway, Ste 200 Yakema, WA 98901	Gary Railway Company c/o Thomas Kelly President Transtar Inc. 1200 Pennsylvania Avenue Suite 300 Pittsburgh, PA 15222

Indiana & Ohio Railway Company c/o Scott Williams, Senior Vice President and General Counsel Rail America Inc. 7411 Fullerton St. Suite 300 Jacksonville, FL 32256	Ryan Ratledge General Manager Indiana Ohio & Railway Company 2856 Cypress Way Cincinnati, OH 45212
Daniel R. Sabin President Iowa Northern Railway 122 North 2nd Street P.O. Box 640 Greene, IA 50636	Iowa, Chicago & Eastern Railroad Corporation c/o Vern G. Graham President Dakota, Minnesota, and Eastern Railroad Corporation 140 N. Phillips Ave. Sioux Falls, SD 57104
Thomas Walsh President Montana Rail Link, Inc. PO Box 16390 101 International Way Missoula, Montana 59808-6390	Nathan Fenno President New York, Susquehanna and Western Railway Corp. One Railroad Avenue Cooperstown, NY 13326
Hugh M. Tarbutton President Sandersville Railroad Company P.O. Box 269 Sandersville, GA 31082	



 Jeffrey O. Moreno